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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,989	10/12/2001	Judith Lee Gardner	29248/AP01949	3346

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MARSHALL, GERSTEIN & BORUN LLP  
6300 SEARS TOWER  
233 S. WACKER DRIVE  
CHICAGO, IL 60606

EXAMINER

BROADHEAD, BRIAN J

ART UNIT PAPER NUMBER

3661

DATE MAILED: 11/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/976,989

Applicant(s)

GARDNER ET AL.

Examiner

Brian J. Broadhead

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 October 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 40 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The addition of "identified good" and "good" in the claim is not supported by the specification. In each instance that previous driver behavior or habitual behavior are mentioned in the specification there is no usage of "identified good" and "good".

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 3-22, 24-39, 40, and 41 are rejected under 35 U.S.C. 102(e) as being anticipated by Kubota et al., 6249720.

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3. As per claims 1 and 31, 36, 40 and 41, Kubota et al. disclose receiving operating data from the vehicle relating to the vehicle operating condition on lines 65, on column 1, through line 8, on column 2; monitoring an interior portion of the vehicle and receiving operator activity data from the interior portion of the vehicle relating to activities of the operator within the interior portion on lines 29-30, on column 7; receiving vehicle environment data from the environment external to the vehicle on lines 31-35, on column 7; monitoring the vehicle operator and receiving operator condition data relating to a condition of the vehicle operator on lines 10-22, on column 13; recording an operator performance assessment based on the vehicle operating data, the operator activity data, the vehicle environment data and the operator condition data the operator performance assessment being a score assessing the ability of the operator to operate the vehicle relative to at least one of accepted good practices comprising one of driving performance of a normal population, previous driving performance, and habitual behavior on lines 40-56, on column 7, and lines 8-27, on column 9; and reporting the operator performance assessment to the operator on lines 11-15, on column 9.

4. As per claim 3, Kubota et al. disclose the reporting occurs during the operation of the vehicle on lines 11-15, on column 9.

5. As per claim 4, Kubota et al. disclose recording a first operator assessment relating to a first period of vehicle operation and recording a second operator performance assessment relating to a second period of operation and comparing the two on lines 62-65, on column 13.

6. As per claim 5, Kubota et al. disclose the step of receiving operator preference data, and wherein the step of recording an operator performance assessment comprises recording an operator performance assessment based on the operator preference data on lines 25-38, on column 19.
7. As per claims 6-8, Kubota et al. disclose the performance is representative of the operator skill and provides a visual indication on lines 10-29, on column 9.
8. As per claims 9-14, 32, Kubota et al. disclose the vehicle operating condition is vehicle speed or acceleration on line 50, on column 11; the operating condition is throttle application and throttle position, brake application and brake position, or steering wheel input and steering wheel position on line 51, on column 11.
9. As per claims 15-20, 33, Kubota et al. disclose the step of monitoring an interior portion of the vehicle comprises monitoring the usage of vehicle system controls, driving controls, telematic controls, comfort controls, infotainment controls, and communication controls by the operator on column 11.
10. As per claims 21-22 and 24, 34, Kubota et al. disclose monitoring a physical condition of the driver and the condition comprises fatigue and psychological condition on lines 10-22, on column 13.
11. As per claim 25, Kubota et al. disclose monitoring a distraction condition of the operator on lines 10-22, on column 13.
12. As per claim 26, Kubota et al. disclose monitoring vehicle passengers on lines 25-30, on column 12.

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13. As per claims 27 and 28, Kubota et al. disclose environment data comprises road condition data on lines 5-8, on column 28, and environment data comprises road lane following data on lines 25-30, on column 11.

14. As per claims 29 and 30, 35, Kubota et al. disclose environment data comprises headway data on line 7, on column 2; and environment data comprises traffic data on lines 57-61, on column 6.

15. As per claim 37, Kubota et al. disclose exterior sensors comprise at least one of radar, laser, video, and sonar, on lines 30-33, on column 7.

16. As per claim 38, Kubota et al. disclose operator activity sensors comprise video on lines 29-31, on column 7.

17. As per claim 39, Kubota et al. disclose the feedback message comprises a pre-recorded message on lines 5-21, on column 8.

***Claim Rejections - 35 USC § 103***

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

19. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kubota et al., 6249720, in view of McMillan et al., 5797134.

20. Kubota et al. disclose the limitations as set forth above. Kubota et al. does not disclose reporting the operator performance assessment upon conclusion of vehicle

operation. McMillan et al. teach of reporting the operator performance assessment upon conclusion of vehicle operation on lines 5-10, on column 10. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the periodic reporting of McMillan et al. in the invention of Kubota et al. because such modification would allow the use of the driver assessment of Kubota et al. to improve extraction of selected insurance related data as stated on lines 47-60, on column 3, of McMillan et al.

21. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kubota et al., 6249720, in view of Lemelson et al. 6487500.

22. Kubota et al. disclose the limitations as set forth above. Kubota et al. does not disclose the physical condition comprises intoxication. Lemelson et al. teach of determining the physical condition is intoxication on lines 22-43, on column 34. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the condition measuring of intoxication of Lemelson et al. in the invention of Kubota et al. because such modification would decrease the possibility of a collision in a dangerous or hazardous situation as stated on lines 38-40, on column 34.

### ***Response to Arguments***

23. Applicant's arguments filed 8-26-04 have been fully considered but they are not persuasive. Applicant's arguments are counter to his claimed invention. Applicant states in his arguments "Kubota only discloses that its agent will react whenever a driver applies break pressure in a manner outside the driver's normal break application. Because Kubota teaches that its agent will eventually not react to break pressure that is

indicative of a driver's normal break application, the agent will eventually not react to a bad driver that consistently applies habitual 'panic breaking.' Therefore, even according to Examiner's own statement that "panic breaking' is contrary to good practice, Kubota may be interpreted to actually sanction 'panic breaking'." However, as illustrated in claims 40 and 41, "habitual behavior" is considered a known good practice according to the current invention. If the applicant's invention uses habitual behavior as a known good practice it will suffer the same problem that applicant has presented in the arguments and tried to point out as a difference. Applicant's arguments have only shown more clearly how Kubota reads on the current invention. The rejection is maintained.

### ***Conclusion***

24. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.



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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian J. Broadhead whose telephone number is 703-308-9033. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Black can be reached on 703-305-8233. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

*BJB*

BJB  
November 1, 2004

*Thomas G. Black*  
THOMAS G. BLACK  
SUPERVISORY PATENT EXAMINER  
GROUP 3661